

CERTIFIED COPY
United States Court of Appeals
For the First Circuit

No. 04-2464

D.C. #04-12054

J. Young

STEPHEN M. CORBETT,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

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FIRST CIRCUIT COURT OF APPEALS

BOSTON, MA

By: 

Date: **SEP 23 2005**

Before

Boudin, Chief Judge,
Lynch and Lipez, Circuit Judges.

JUDGMENT

Entered: September 23, 2005

Petitioner Stephen Corbett, a federal prisoner, appeals the district court's dismissal of his §2255 petition. Corbett sought post-conviction relief pursuant to the Supreme Court holdings in Blakely v. Washington, 542 U.S. 296 (2004) and Crawford v. Washington, 541 U.S. 36 (2004). Blakely claims are now viewed through the lens of United States v. Booker, 125 S.Ct. 738 (2005). Cirilo-Muñoz v. United States, 404 F.3d 527, 532 (1st Cir. 2005).

The district court determined that Blakely/Booker was not retroactively applicable on collateral review and, accordingly, dismissed the claim. The district court was correct. United States v. Fraser, 407 F.3d 9, 11 (1st Cir. 2005) (citing Cirilo-Muñoz, 404 F.3d 527) ("This court has held that petitions under 28 U.S.C. § 2255 are unavailable to advance Booker claims in the absence of a Supreme Court decision rendering Booker retroactive.").

It is unclear from the district court's ruling whether the district court intended to grant a certificate of appealability on Corbett's Crawford claim and Corbett has not sought to expand the certificate of appealability to include the Crawford claim. Assuming *dubitante*, that the Crawford claim is properly before us, it too lacks merit. Corbett seeks only to challenge the constitutionality of his sentence, and the holding in Crawford does not apply to sentencing. United States v. Monteiro, 417 F.3d 208, at *15 (1st Cir. 2005).

Accordingly, the district court's dismissal of Corbett's §2255 petition is affirmed. The appeal is terminated.

By the Court:

Richard Cushing Donovan, Clerk.

By: MARGARET CARTER
Chief Deputy Clerk.

Certified Copy to Hon. William Young; Sarah Thornton, Clerk USDC

cc: Mr. Corbett, Ms. Poswistilo, Ms. Chaitowitz & Ms. Vander Jagt